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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,638	12/29/2003	Ramses Nashed		2854
49716	7590	06/02/2005	EXAMINER	
EDWARD P. DUTKIEWICZ, ESQ. EDWARD P. DUTKIEWICZ, P.A. 640 DOUGLAS AVENUE DUNEDIN, FL 34698-7001			RAGONESI, ANDREA M	
		ART UNIT		PAPER NUMBER
				3743

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/747,638	NASHED, RAMSES
	Examiner	Art Unit
	Andrea M. Ragonese	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1 and 6 is/are allowed.
- 6) Claim(s) 2-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 December 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Amendment

1. The amendment filed on March 17, 2005 has been entered. Examiner acknowledges that **claims 2-5** have been amended, and **claims 1 and 6** have been allowed. Subsequently, **claims 1-6** are under consideration.

Response to Arguments

2. Applicant's arguments filed March 17, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a partial sealing portion but is not completely sealed to the user's face") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In addition, the prior art of record discloses and/or teaches the newly added structural limitation of the mask (i.e., "a face recipient portion having a face recipient area with at least a part of the face recipient area of the mask being configured so as to be in contact with a user's face"), as shown in all the prior art drawings.

Therefore, the amendment fails to distinguish the instant invention over the prior art. The 103(a) rejections of **claims 2-5**, as described in the previous Office Action, dated December 17, 2004, are hereby repeated and have been made **FINAL**.

Drawings

3. The drawings are still objected to under 37 CFR 1.84(r) due to the use of improper reference character notation. Lead lines are required for each reference character. For example, element **106** is missing the lead line that corresponds to the element which it represents. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures.
4. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. The abstract of the disclosure is objected to because of the use of improper sentence structure. The abstract should only contain complete sentences, not sentence fragments as it currently does. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. **Claim 4** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No new matter may be entered in an amendment. Specifically, the claim limitation, as found in **claim 4**, reciting, "the gas moving in one direction" is considered new matter since the originally filed disclosure does provide

adequate support or evidence that Applicant possessed the presently claimed invention at the time the instant application was filed.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. **Claims 2, 3 and 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickle et al. (US 5,676,133) in view of Wright (US 2,222,971). Hickle et al. discloses a gas scavenging apparatus comprising all the limitations recited in **claims 2, 3 and 5**, with the exception of a face mask with a flapper valve and a strap. However, the use of flapper valve to bring in fresh ambient air and a strap to secure the mask to the patient's head was known at the time the invention was made. Specifically, Wright teaches the use of "a one-way valve which freely opens during inhalation to permit the fresh outside air to be drawn...into the mouth compartment" and "a plurality of flexible adjusting straps 2 for fitting the face-piece to the user." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hickle et al. by adding a fresh air flapper valve to allow ambient air from the atmosphere into the mask as well as straps to secure to the user's face because it is well known in the art, as taught by Wright, to use a flapper valve in order to only let fresh air into the mask and mask straps in order to securely seal the mask to the user's face without allowing any respiratory gases escape to the surrounding

environment before they are able to be recycled to the patient (and to prevent any doctors, nurses or visitors in the room from ingesting the anesthetic gases).

11. **Claims 2 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickle et al. (US 5,676,133) in view of Macris et al. (US 4,989,596). Hickle et al. discloses a gas scavenging apparatus comprising all the limitations recited in **claims 2 and 4**, with the exception of a face mask with a flapper valve. However, the use of flapper valve to bring in fresh ambient air was known at the time the invention was made. Specifically, Macris et al. teaches the use of "a pair of intake valves **51**...[that] serve to allow atmospheric air to enter the face chamber...[wherein] intake valve **51** [includes] a resilient flap **52** mounted on the inside of the sidewall **25** with a plurality of intake holes **54**...[for allowing] air to enter face chamber **12** from the atmosphere but precludes the passage of gas from the pressure chamber **12** to the atmosphere." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hickle et al. by adding a fresh air flapper valve to allow ambient air from the atmosphere into the mask because it is well known in the art, as taught by Macris et al., to use a flapper valve in order to only let fresh air into the mask without allowing any respiratory gases escape to the surrounding environment before they are able to be recycled to the patient (and to prevent any doctors, nurses or visitors in the room from ingesting the anesthetic gases).

Allowable Subject Matter

12. **Claims 1 and 6** are allowed.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

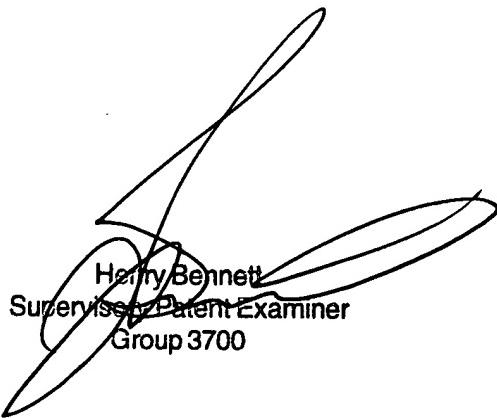
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese whose telephone number is 571-272-4804**. The examiner can normally be reached on Monday through Friday from 9:00 am until 5:00 pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR
May 31, 2005



Henry Bennett
Supervisory Patent Examiner
Group 3700

A handwritten signature of "Henry Bennett" is written over three overlapping ovals. Below the signature, the text "Supervisory Patent Examiner" and "Group 3700" is printed.